

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

ALLAN L. GANT, Doctor,  
Petitioner-Appellant.

v.

No. 95-8589

FEDERAL BUREAU OF INVESTIGATION,  
Respondent-Appellee.

Appeal from the United States District Court  
for the Southern District of West Virginia, at Charleston.  
Charles H. Haden II, Chief District Judge.  
(CA-95-948-2)

Submitted: October 10, 1997

Decided: November 17, 1997

Before WILKINS, ERVIN, and WILLIAMS, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Allan L. Gant, Appellant Pro Se. Rebecca A. Betts, United States  
Attorney, Charleston, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Appellant Allan L. Gant, a federal prisoner, filed a petition for a writ of mandamus requesting that the district court direct the FBI to investigate a complaint he filed. Gant also filed a request to proceed in forma pauperis. The court ordered that Gant pay a partial filing fee of \$13.75, which was fifteen percent of the money available to him at the time of filing his petition. After Gant paid the fee, the court dismissed his action as frivolous under 28 U.S.C. § 1915(d) (1994), amended by 28 U.S.C.A. § 1915A (West Supp. 1997), on the basis that Gant did not allege facts that would satisfy the court's limited subject matter jurisdiction.

Section 1915 allows a litigant to proceed in forma pauperis upon proof of inability to pay court costs and fees. 28 U.S.C. § 1915(a), amended by 28 U.S.C.A. § 1915(a) (West Supp. 1997).<sup>\*</sup> The statute also allows the district court to dismiss the in forma pauperis complaint sua sponte if it is frivolous or malicious. 28 U.S.C. § 1915(d). In Church v. Attorney General, No. 95-7722, 1997 WL 560070 (4th Cir. Sept. 10, 1997), this court addressed the issue of whether the district court, applying pre-PLRA law, erred in dismissing Church's action as frivolous after his payment of a partial filing fee. See Church, 1997 WL 560070, at \*5. The procedural aspects of the case are the same ones at issue here. The court held that the district court erred in dismissing the complaint sua sponte as frivolous. Id.

We therefore vacate the district court order dismissing Gant's petition and remand the case to the district court to allow Gant to amend his petition, id., or have the Defendants respond to the petition and file a motion to dismiss, if they so choose.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### VACATED AND REMANDED

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<sup>\*</sup>Gant filed his petition and the district court ruled on it before the amendments to § 1915 were made under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA" or "the Act").